

\$~66

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

Date of Decision: 24.7.2019

% **W.P.(C.) No. 7954/2019**

BALJEET SINGH

..... Petitioner

Through: Mr. Ankit Jain, Advocate with Mr. Siddhant Nath, Mr. Shiven Khurana, Ms. Aayushi, & Mr. Sarma, Advocates.

Versus

GOVERNMENT OF NCTD & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel GNCTD (Services) with Mr. N.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

CM No. 32988/19

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) No. 7954/19

1. Issue notice. Counsel for the respondents accepts notice. We have heard learned counsels for the parties, perused the record, and we proceed to dispose of the petition at this stage itself.
2. The petitioner has filed the present writ of certiorari, inter alia, with the following prayers :
 - 1 To set aside the order dated 02.11.2018 passed in O.A. No. 1156/2013 by the Central Administrative Tribunal, Principal Bench, New Delhi whereby major punishment of forfeiture of one year was inflicted upon the petitioner.
 - 2 To direct the respondent that the forfeited years of service be restored as if it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.
 - 3 To direct the respondents to remove the name of the petitioner from secret list of doubtful integrity from date of inception.
3. The relevant facts of the case are that a departmental enquiry was initiated against the petitioner on 13.08.2009 on the allegation that without any reason he mercilessly gave beatings to Sohan Lal S/o Shri Tika Ram and Rajender S/o Sh. Puranwasi Yadav and thereby caused damage to the image of the police force.
4. The brief summary of allegations against the petitioner are that on 03.06.2009 while H.C. (Exe.) Anil Kumar No. 223/OD was posted at P.S. Shahbad Dairy, a PCR call about setting ablaze of a

girl at L-45, Sec. 5 Bawana Industrial area was received vide DD No. 30-A. The same was entrusted to H.C. Anil Kumar for necessary action but, instead of attending the call himself, he asked petitioner to reach the spot who, instead of going to the spot, went to a nearby ice factory at L-42, Sec. 5, DSIDC, where he gave beatings to Sohan Lal S/o Shri Tika Ram and Rajender S/o Puranwasi Yadav without any reason and in the process he caused damage to the image of the police force.

5. A detailed departmental enquiry was held against the petitioner and H.C. Anil Kumar, wherein, both were found guilty of the charges framed against them by the Enquiry Officer. The evaluation of evidence found in the enquiry report reads as under :-

“EVALUATION OF EVIDENCE

During the course of enquiry, I have examined total four witnesses in support of the charge framed against H.C.(Exe.) Anil Kumar No. 223/OD and Ct. (Exe.) Baljeet Singh No. 1103/OD. All the witnesses are relevant reliable and dependent witnesses. PW-1 H.C. Satish Kumar No. 136/OD produced daily diary A & B dated 03.06.09. PW-2 Sh. Rajender Singh stated that on 03.06.09 at about 09:30 p.m while he was present in the Ice factory, two policemen came to the factory and questioned about Sohan Lal who is a driver of factory owner. He also enquired as to who had made the call to police at No. 100. He told the police officials that the call was made by Sohan Lal who is present at the first floor. Upon this both the police officers, one of whom was Ct. Baljeet, went up stairs. Baljeet bring

Sohan Lal at ground floor and beat him. Sohan Lal asked him to inform the factory owner on telephone and he telephonically informed the factory owner. Baljeet snatched his phone and started beating him also saying that if he had sympathy for the girl why he did not take her to hospital. PW -3 ASI Kaptain Singh No. 3311/D stated that DD No. 56-B dated 04.06.09 PS-Shahbad Dairy was entrusted to him by SHO and he contacted SDM, Narela, got the statement of Smt. Munni Devi w/o Sh. Babu Lal R/o L-45, Sector-5, DSIDC recorded and got a case FIR No. 135/09 u/s 307 IPC registered. PW-4 Sh. Sohan Lal stated that about 5-6 months back at about 09:10 p.m he had made a call at No. 100 that a lady has been set ablaze in the nearby factory. At that time he was present at factory No. L-42, Sector-5, DSIDC, Bawana. The call was responded by two police officers who questioned him as to why he had made the call at no. 100. He told them that a lady has been set ablaze in the nearby factory and he made the call at No. 100. Upon this the two police officials came to him and started beating him. He has identified Ct. Baljeet, who was present in the proceedings. Ct. Baljeet had beaten him outside the factory. From the above averment of the PWs and evidence on record, it is clear that H.C. Anil Kumar failed to take legal action promptly into the call entrusted to him and later the same was marked to ASI Kaptan Singh, who registered a case vide FIR No. 135/09 u/s 307 IPC at PS S.B. Dairy. H.C. Anil Kumar instead of attending the call himself, sent the beat officials at the spot, who in turn beaten Sh. Sohan Lal and Rajender. I have also seen the vide footage of the alleged beating in which a police official is seen beating a person and Sh. Sohan Lal has identified him as the police official constable Baljeet Singh who had beaten him.

CONCLUSION

After carefully going through the statements of the PWs, defence statement of the delinquents H.C.(Exe) Anil Kumar No. 223/OD and Ct.(Exe.) Baljeet Singh No. 1103/OD and in view of the above discussion, I am of the view that the charge formed against H.C. (Exe.) Anil Kumar No. 223/OD and Ct. (Exe.) Baljeet Singh No. 1103/OD stand proved without any shadow of doubt. (emphasis supplied)

6. After complying with procedure, the Disciplinary Authority concurred with the said findings of the Enquiry Officer and consequently awarded the punishment of forfeiture of one year approved service permanently to the petitioner entailing reduction in his pay from Rs.9710+2400 to Rs. 9350+2400 vide order dated 10.03.2011. The suspension period of the petitioner from 30.06.2009 to 20.06.2010 was decided as period not spent on duty for all intents and purposes. In the said order, the Disciplinary Authority recorded as follows:-

“I have carefully gone through the statements of PWs/DWs, findings of E.O., defence statement, written representations and other material brought on DE file. Both the delinquents were also heard in Orderly Room on 10.3.2011, where they did not adduce any fresh plea, which they have already submitted in their written representation. H.C. Anil Kumar No. 223/OD has mainly contended that on 3.6.09, he was detailed to perform Emergency Duty in P.S./S.B. Dairy. An information regarding settling ablaze of a girl at 45, Sec. 5, Bawana Indl. Area was entrusted to

him for necessary action. Since, he was busy in attending another call at a long distance, he contacted the concerned Beat Staff to reach the spot in view of gravity of the call telling them that he was reaching at the spot soon. Later he reached the spot and took stock of the situation but it was not in his knowledge as to in which hospital the victim had been taken. When he reached at the spot SHO/S.B. Dairy and other staff was also present there. He also stated that since the family members of the victim were not aware as to in which hospital the victim had been taken, he was not briefed about the further course of action. He came to know the name of the hospital only when an information was received from the duty Head Const. of LNJP Hospital. However, when, he was about to leave the hospital to record the statement of victim, the call was entrusted to ASI Kaptan Singh by the SHO and a criminal was registered accordingly.

Const. Baljeet Singh No. 1103/OD has taken the averments that during the course of enquiry Sh. Sohan Lal (PW-4) who was allegedly beaten by him stated that he was beaten by the two policemen but he did not support the charge that he was beaten by him. There is no medical evidence to suggest that Sh. Sohan Lal or Sh. Rajender Singh were beaten. Besides no call about beating was made by them at No. 100. He also stated that even the spot was visited by SHO and other officers but they did not complain about the alleged beating. He also contended that the footage of CCTV might be stage managed to implicate him in false allegations. He also advanced the plea that the allegations leveled by Sh. Sohan Lal and Sh. Rajender Singh are suspicious as there was

darkness and Sh. Sohan Lal had stated that he was beaten by a fat police official but he is not fat.

The above plea taken by the delinquents are not found to be satisfactory. It is not in dispute that PCR call regarding settling ablaze of a girl at 45, Sec. 05, Bawana Industrial area was received at P.S./S.B. Dairy and entrusted to H.C. Anil Kumar, No. 223/OD for necessary action. He Instead of attending the call sent Const. Baljeet Singh, No. 1103/OD and on another Const. to attend the call at his own. He further did not follow the call and also not made any effort to find out the whereabouts of the victim girl from 10:55 p.m on 03.06.2009 till 7:00 P.M. on 06.06.2009. The matter further came into notice only when the Duty Constable of LNJP Hospital has informed P.S./S.B. Dairy regarding the incident vide DD No. 55-B dated 04.06.09. This information was entrusted to ASI Kaptan Singh by SHO/S.B. Dairy vide DD No. 56-B dated 4.6.2009 who got recorded her statement through Tehsildar/Narela and got a case registered vide FIR No. 135/09 dated 5.6.2009 u/s 307 IPC, PS Shabad Dairy. Hence, the plea taken by H.C. Anil Kumar, No. 223/OD in his defence are not plausible.

As regards Const. Baljeet Singh, No. 1103/OD (now 2078/OD), it is clearly established during the D.E. proceedings that on asking by H.C. Anil Kumar, No. 223/OD, he visited nearby ice factory at L-42, Sec. 5, DSIDC, Bawana and questioned about Sohan Lal, who was the driver of the factory owner. He also enquired as to who had made the call to police at No. 100. He went upstairs at first floor of the factory and found Sohan Lal there.

Thereafter, he brought Sohan Lal at ground floor and beat him. The beating of the victims namely Rajender is evident from the CD prepared from the CCTV. Hence, in the nut shell I conclude that H.C. Anil Kumar failed to take prompt legal action into an sensitive nature PCR call. He instead of attending the call himself sent the Beat Officials i.e. Const. Baljeet Singh, No. 1103/OD and another Const. at the spot and in turn Const. Baljeet Singh beaten Sh. Sohan Lal and Rajender. Such incident cause damage to the reputation/ image of the disciplined force like Delhi Police. Const. Baljeet Singh, No. 1103/OD not only tarnish the people friendly image of Delhi Police by beating the complainant who had made the PCR call but this behavior also led to spoiling the image and relationship of police with the general public, which is against the ethos of making Delhi Police the people friendly force. The delinquent Const. has also admitted that he had made a mistake and he shall not repeat the same in future.

Keeping in view of above discussion and over all facts and circumstances of the case I am of the considered opinion that both the delinquent Constables are guilty of the charge framed against them. Hence, I, Amit Roy, Addl. Dy. Commissioner of Police-II, Outer Distt., Delhi at present looking after the work of Addl. DCP-I/OD vide Order No. 2145-85/Estt-I/Outer Distt. dated 1.2.2011, **impose the penalty of forfeiture of one year approved service permanently upon H.C. Anil Kumar, No. 323/OD (now 985/OD) and Const. Baljeet Singh, No. 1103/OD, now 2078/OD entailing reduction in their pay from Rs. 10240+2400/- to Rs. 9870+2400/- and Rs. 9710+2400/- to Rs. 9350+2400/- respectively for**

their lapse, which would meet the end of justice. The suspension period of Const. Baljeet Singh, No. 1103/OD, now 2078/OD from 30.6.2009 to 20.6.2010 is decided as period not spent on duty for all intents and purposes.”

(emphasis supplied)

7. The appeal preferred by the petitioner was also rejected by an order passed by the Joint Commissioner of Police acting as Appellate Authority. The relevant extracts from the said order dated 07.09.2012 reads as follows :

“A regular departmental enquiry was initiated against the appellant vide order No. 7786-95/HAP/OD dated 13.08.2009. The enquiry officer completed the departmental enquiry and submitted findings concluding therein that the charge framed against the appellant proved beyond the shadow of doubt. A copy of the same was served upon the appellant to submit his representation. The appellant submitted the representation. His written reply and verbal submissions during orderly room were not found satisfactory by the Disciplinary Authority and he was awarded the punishment vide the order appealed against.

*Const. Baljeet Singh, No. 1103/OD was heard in OR on 03.09.12, during the OR he pleaded that he did not beat them. When he was told that the incident of beating has been recorded in the CCTV and both the victim has already narrated the facts of beating during the departmental proceedings, he kept mum and only requested for mercy. Taking into consideration circumstances where a person informed the police about an incident of setting ablaze a girl deserved to be encouraged but he was beaten up mercilessly without any cogent reason, **I no reason to interfere with the***

punishment awarded by the disciplinary authority and as such the appeal is rejected. ” (emphasis supplied)

8. Thereafter, the petitioner preferred O.A. No. 1156/2013 and vide impugned order dated 02.11.2018, the Tribunal dismissed the Original Application.
9. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.
10. It is mainly urged by the counsel for the petitioner that the petitioner had examined two defence witnesses, and their depositions were not considered by the enquiry officer and the enquiry officer solely relied upon the evidence of the prosecution witnesses. He further urged that the enquiry officer has relied upon the CCTV footage in the departmental enquiry, which has not been proved as per law. Therefore, he argues that the proceedings are vitiated.
11. On the other hand, it is urged by the counsel for the respondents that there is no infirmity in the impugned order. It is further urged that the enquiry officer after due consideration of the entire evidence on record, concluded that the charge against the petitioner stands proved, which findings have been vertically upheld. It is further urged by the counsel for the respondents that in judicial review, the scope of interference by this Court is very limited.
12. It is an admitted fact on record that a PCR call vide DD No. 30-A dated 03.06.2009 about setting ablaze a girl at 45, Sec. 5,

Bawana Industrial Area was received by H.C. (Exe.) Anil Kumar No. 223/OD who in spite of attending the same entrusted it to the petitioner. It is alleged against the petitioner that he instead of going to the spot, alongwith Ct. Charan Singh went to a nearby Ice factory at L-42, Sec.-5, DSIDC and on reaching there, he gave beatings to Sohan Lal S/o Sh. Tika Ram and Rajender S/o Sh. Puranwasi Yadav without any reason. This act of the petitioner caused damage to the image of the police force.

13. As far as the contention of the counsel for the petitioner that defence evidence was not considered and the CCTV footage relied upon by the respondents was not proved as per law, both these contentions have no force, in view of the fact that the disciplinary proceedings are governed by the preponderance of probabilities, and the wrong doings have not to be proved beyond reasonable doubt, as in criminal trial.
14. The record of the entire proceedings reveals that due weightage has been given to the defence witnesses produced by the petitioner and as far as the question of reliance on CCTV footage is concerned, there is a specific finding of the Enquiry Officer that he had seen the video footage of the alleged beating in which a police official is seen beating a person and Sohan Lal identified him as the police official constable Baljeet Singh (petitioner herein). The appellate authority in its order dated 07.09.2012 has also recorded that when the petitioner was told that the incident of beating has been recorded in the CCTV and both the victims have

already narrated the fact of beating during the departmental proceedings, he kept mum and only requested for mercy. The testimonies of PW's has been found to be credible and there is nothing in the testimonies of DW's that could shake the case of the department.

15. The defence evidence that the petitioner relies upon has been extracted in the enquiry report/ findings recorded by the enquiry officer. Thus, it would not be correct to say that the enquiry officer has not considered the defence evidence. We have also, ourselves, perused the enquiry report/ findings and it is evident that the defence evidence of DW1 Sh. Santosh Kumar, and DW2 Sh. Shaquil Ahmed do not advance the defence of the petitioner. DW1– Sh. Santosh Kumar claimed that he was a resident of L-44, Sector-5, DSIDC, Bawana. He claimed that on the fateful day i.e. 03.06.2009, he was residing in jhuggi in front of factory No. L-45 along with his mother and sister in law. He was working as a watchman of factory No. L-45 which was under construction at the relevant time. He claimed that on 03.06.2009, at around 10.00 pm, his sister-in-law – Smt. Munni Devi was cooking food and her clothes got fire. Her mother took his sister-in-law to the hospital. He was cross-examined and stated that the distance between L-42 and L-45 was around 80-90 feet. He claimed that when the police head constable came to his factory i.e. L-45, he was inside the factory. He was not in a position to identify the person standing on the road of factory No. L-42.

16. This statement has absolutely no bearing on the charge framed against the petitioner, since the charge framed against the petitioner relates to the alleged merciless beatings given by him to Sohan Lal S/o Shri Tika Ram and Rajender s/o Puranwasi Yadav without any reason at the ice factory situated at L-42, Sec.5, DSIDC.
17. Similarly, the statement of DW-2 Sh. Shaquil Ahmed is also of no avail. He stated that he was working as supervisor in factory No. L-44. On 03.06.2009, he was on night duty. At around 11 PM, he was checking his labour. He noticed police officers standing in front of factory No. L-42. He claimed that he did not hear about the beating of any worker in factory No. L-42. On his being questioned by the department, he only stated that the senior police officer had come around 11.00 PM to the gate of factory No. L-42 in a gypsy.
18. Though, this witness has claimed that he did not hear about the beating of any worker in factory No. L-42, but, this version of DW 2 is of no help to the petitioner because there is a specific finding of the Enquiry officer that in the CCTV footage a police official is seen beating a person and Sohan Lal identified him as the police official constable Baljeet Singh (petitioner herein). It is not even the petitioner's case that he had not gone to the Ice Factory situated at L-42, Sec.-5, DSIDC. In the light of the aforesaid, the enquiry officer, the disciplinary authority and the appellate authority, rightly, did not give much weightage to the

defence evidence produced by the petitioner.

19. The Enquiry Officer vide his findings dated 02.06.2010, the Disciplinary Authority vide order dated 10.03.2011 and the Appellate Authority vide order dated 07.09.2012 have returned consistent findings of guilt. The O.A. preferred by the petitioner has also been dismissed by the Tribunal vide its order dated 02.11.2018.
20. This Court is not sitting as an appellate forum and it is not for this Court to re-appreciate the evidence. There is nothing on record to show that there has been miscarriage of justice or violation of principles of natural justice as the petitioner was afforded sufficient opportunity to defend himself. The findings returned in the enquiry against the petitioner, which have been accepted by the Disciplinary Authority and the Appellate Authority cannot be said to be unreasonable, without any basis, or not borne out from the record. Reliance in this regard can be placed upon ***Government of Andhra Pradesh versus Mohd. Nasrulla Khan***, [2006 (2) SCC 373], in which the Hon'ble Apex Court has held that the scope of judicial review is confined to correct the errors of law or procedural error if they result in manifest miscarriage of justice or violation of principles of natural justice. The Apex Court in para 11 has held that :

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is

circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority.”

21. The Apex Court in the case of **S.R. Tewari Vs. Union of India**, [2013 (7) SCALE 417], has reiterated that *“The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”*

22. The Hon’ble Supreme Court in a recent judgment titled as **Union of India and Ors. Vs. Sitaram Mishra and Anr.**, Civil Appeal No. 6183 of 2010, decided on 11.07.2019 has held that :-

“A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules.”

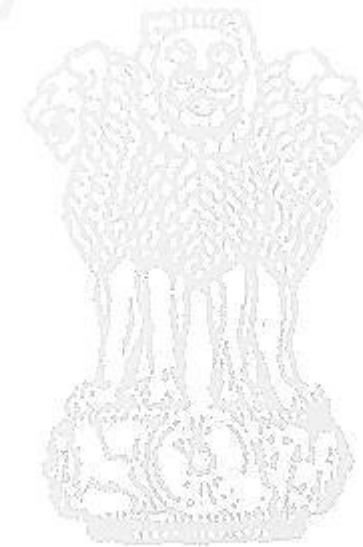
23. We do not find any infirmity in the impugned order dated 02.11.2018, passed by the Principal Bench of Central Administrative Tribunal. The petition is, therefore, dismissed.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

JULY 24, 2019

Sumant



न्यायमेव जयते